

May 11, 2005

## VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Meeting, IP-Enabled Services, WC Docket No. 04-36**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("Commission") Rules, this letter serves to provide notice in the above-captioned proceeding of a series of *ex parte* meetings with Commissioner Abernathy, Commissioner Adelstein, and Commission staff. On May 10, 2005, the undersigned accompanied Paul Arena, CEO and Chairman of i2 Telecom International, Inc. ("i2 Telecom") and Craig Walker, CEO of Dialpad Communications, Inc. ("Dialpad") to meet with Commissioners and staff in several meetings. The first meeting was with Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps. The second meeting was with Commissioner Kathleen Abernathy, and Lauren Belvin, Legal Advisor to Commissioner Abernathy. The third meeting was with Commissioner Jonathan Adelstein, Scott Bergmann, Legal Advisor to Commissioner Adelstein, and Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein. The fourth meeting was with Michelle Carey, Legal Advisor to Chairman Kevin Martin. Written materials provided at these meetings are attached hereto.<sup>1</sup>

During the above-referenced meetings, i2 Telecom and Dialpad discussed the four part test under the Commission's *E-911 Scope Order*<sup>2</sup> to determine which carriers should be subject

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<sup>1</sup> Attachment 1 contains the agenda for the meetings. Attachment 2 is a presentation provided by Dialpad.

<sup>2</sup> See *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5*

to the Commission's 911 and E-911 rules. The Commission identified these criteria in the IP-Enabled Services NPRM as a method to determine which entities should be subject to 911 or E-911 obligations. Specifically, in the IP-Enabled Services NPRM the Commission set forth the following criteria:

- 1) Whether the entity offers real-time, two-way switched voice service, interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services;
- 2) If customers using the service or device have a reasonable expectation of access to 911 and enhanced 911 services;
- 3) Whether the service competes with traditional CMRS or wireline local exchange service; and
- 4) Whether it is technically and operationally feasible for the service or device to support E911.<sup>3</sup>

Dialpad and i2 Telecom noted that there are various types of VoIP services being offered, and depending on the type of service, access to emergency services may not be a reasonable customer expectation. Specifically, both i2 Telecom and Dialpad provide certain services that are software applications *that require the use of a personal computer – not a hardware device like an analog telephone adaptor – to utilize the service*. i2 Telecom's VoiceStick, for example, requires customers to use a personal computer to place VoIP calls. This product is a memory stick device which must be plugged into a computer's USB port in order to function, and contains software that resides on the memory stick that, when connected, provides the user with a computer application that allows them to place voice transmissions. Similarly, Dialpad's softphone software application provides similar functionality requiring the use of a personal computer (not simply an analog telephone adaptor). In both instances, the customer would normally attach headphones and a microphone to the computer in order to use the service. The computer must be powered on, connected to the Internet and actively running the VoIP software application before being able to place a call using these services.

The i2 Telecom and Dialpad services described above are software-based, computer dependent services, and as such, there is no reasonable consumer expectation that these software programs will provide 911 or E-911 functionality. Simply stated, Dialpad and i2 Telecom submit that no customer, including third parties, would mistake these services for traditional telephone service capable of placing emergency calls. Consumers faced with an emergency will not run to the computer, turn it on, launch the application, strap on the headphones, adjust the microphone, and use the keyboard to dial the digits 9-1-1 in an emergency. Nor will third parties

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*MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, (2003) ("*E-911 Scope Order*").

<sup>3</sup> See *E-911 Scope Order*, ¶ 55.

rush to the computer to place an emergency call. As such, these software-based VoIP services fail the Commission's second criteria from the *E-911 Scope Order*, as customers of these services, as well as third parties, have no reasonable expectation to access 911 or E-911 services with these products.<sup>4</sup>

Dialpad and i2 Telecom are also selling ATA devices. The devices sold by both companies have a RJ-11 jack for traditional telephone service (i.e., PSTN switched service). When a customer dials 911, those calls are automatically bridged to the PSTN connection. At this point, the customer's local exchange provider routes the call to the appropriate PSAP just like any other wireline 911 call. Given the Commission's position that, "[t]o the extent – if any – that application of a particular regulatory requirement is needed to further critical national policy goals, that requirement must be tailored as narrowly as possible, to ensure that it does not draw into its reach more services than necessary," the Commission must exercise regulatory restraint and specifically target those services that consumers would reasonably rely on as providing access to E-911 services. Dialpad and i2Telecom do not advertise their services as a home telephony replacement service. They provide conspicuous consumer disclosures and are willing to enhance such disclosures should the Commission find this necessary. As such, both Dialpad and i2Telecom's ATA-based service fail both the second and third criteria, as customers cannot reasonably rely on a service they know not to be E-911 capable to provide such functionality, nor does the service compete with traditional CMRS or wireline telephone service given the particular designs of these VoIP products. Importantly, the device for both companies enables customers to make traditional E-911 calls using the PSTN as the device allows for the connection of a wireline PSTN line. Both Dialpad and i2 see this solution as a superior solution for 911 services as opposed to VoIP originated 911 calling as their solutions will work in the event of a power or Internet connectivity outage while a VoIP based solution will not.

Dialpad and i2 Telecom recommend that the Commission further examine the variations in different types of second line VoIP services to determine if such services should be subject to E-911 obligations.<sup>5</sup> Dialpad and i2 Telecom further recommend that software originated calling by means of a personal computer should specifically be outside of the scope of the upcoming VoIP E-911 as the likelihood of end user or third party confusion regarding 911 capabilities is non-existent.

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<sup>4</sup> Dialpad and i2 Telecom note that these software applications also fail the third part of the test in that they do not compete with CMRS or wireline local exchange service as these service are clearly meant to supplement a basic local exchange or CMRS service. Since the *E-911 Scope Order* established a conjunctive test, it is enough that the software applications offered by the companies fails one prong.

<sup>5</sup> The Commission should also ensure that it promotes innovation in the provision and deployment of emergency services. By promoting the creation of IP-enabled PSAPs, the Commission could significantly simplify the delivery of E-911 calls from a variety of IP-enabled services, reduce the costs associated with implementing a VoIP E-911 solution, support emergency access redundancy, and provide a platform for the transmission of richer data to greatly enhance the delivery of emergency services. Dialpad and i2 Telecom urge the Commission not to lose this goal through rushed and imprecise VoIP E-911 obligations in any forthcoming VoIP E-911 order.

Marlene H. Dortch

May 11, 2005

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Pursuant to the Commission's Rules, this letter is being electronically submitted to the Secretary for filing in the above-referenced proceeding.

Sincerely,

/s/

Ronald W. Del Sesto, Jr.

Counsel for Dialpad Communications, Inc.  
and i2 Telecom International, Inc.

Attachments

cc: Commissioner Kathleen Abernathy  
Commissioner Jonathan Adelstein  
Lauren Belvin  
Scott Bergmann  
Michelle Carey  
Barry Ohlson  
Jessica Rosenworcel  
Tom Navin  
Pam Arluk  
Julie Veach